

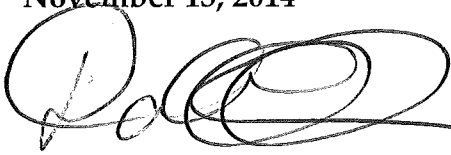
**DOCKET NO. A87-610**

**Tom Gentry and Gentry-  
Pacific, Ltd.**

**Proposed Findings of Fact,  
Conclusions of Law, and Decision and  
Order**

*Staff Report*

Action Meeting  
November 13, 2014

A handwritten signature in black ink, appearing to read 'D. Orodener', with a long horizontal line extending from the end of the signature.

Daniel Orodener, Executive Officer

Submitted: November 10, 2014

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## Attachment

1. Proposed Findings of Fact, Conclusions of Law, and Decision and Order  
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## 1. BACKGROUND

On October 29, 2014, the Land Use Commission ("Commission") met in Honolulu, Oahu, Hawaii, to consider the Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order Dated May 17, 1988 ("Motion"), filed by Janeen-Ann Ahulani Olds, Lance Keawe Wilhelm, Robert K.W.H. Nobriga, Corbett Aaron Kamohaikiokalani Kalama, and Micah A. Kane, as Trustees of the Estate of Bernice Pauahi Bishop, dba Kamehameha Schools ("KS").<sup>1</sup> Upon completion of the evidentiary portion of the hearing, a motion was made and seconded to recognize KS as the successor Petitioner with standing to seek and obtain the relief requested in the Motion. The motion received six affirmative votes. Thereafter, Chair McDonald requested that the parties file to the extent possible a stipulated proposed findings of fact, conclusions of law, and decision and order on November 5, 2014.

On November 5, 2014, KS filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order. On November 5, 2014, the Office of Planning ("OP") filed Comments to the Proposed Stipulated Findings of Fact, Conclusions of Law, and Decision and Order. Despite the title of its comments, OP stated that it was unable to complete a sufficiently thorough analysis of KS' proposed Order by November 5, 2014, to reach a stipulation on a final Decision and Order.

The Department of Planning and Permitting did not file a Proposed Findings of Fact, Conclusions of Law, and Decision and Order nor did it stipulate to KS' Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

On November 13, 2014, the Commission will consider the remaining request of KS' Motion to amend the Findings of Fact, Conclusions of Law and Decision and Order dated May 17, 1988, as amended by the Order Granting Motion to Amend Condition No. 6 of the Decision and Order Dated May 17, 1988. In the event the Commission is inclined to grant KS' request, staff has prepared a Proposed

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<sup>1</sup> The Motion requested that the Commission (1) recognize KS as the successor Petitioner with standing to seek and obtain the relief requested in the Motion; and (2) issue an Order modifying the Commission's Findings of Fact, Conclusions of Law and Decision and Order dated May 17, 1988, as amended by the Commission's Order Granting Motion to Amend Condition No. 6 of the Decision and Order Dated May 17, 1988, to expressly authorize the use of a portion of the Petition Area in the above-entitled docket for a solar farm for an interim period not to exceed 35 years.

Findings of Fact, Conclusions of Law, and Decision and Order that is based on KS' submittal. In preparing the document, staff added, deleted, and reorganized findings where appropriate. In addition, both substantive and non-substantive changes were made to the findings, conclusions of law, and conditions to improve accuracy, clarity, and comprehensiveness, and to comply with the standard formatting conventions of the Commission.

2. **SUMMARY OF STAFF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

1. **INTRODUCTION**

No substantive changes were made in this section.

2. **FINDINGS OF FACT**

**BACKGROUND & PROCEDURAL MATTERS (FOFs 1 through 47)**

KS' FOF 8 and 9 relating to what the Commission did not impose in the original Findings of Fact, Conclusions of Law and Decision and Order were deleted as they were deemed to be inappropriate. These pertained to the D&O's lack of conditions regarding development deadlines/ timeframes and substantial compliance with representations. KS' FOF 14 regarding its representation that it fulfilled Condition No. 6 since it was an active participant in LOTMA was also deleted as it was deemed to be inappropriate and unnecessary. KS's FOF 31, which reflected that no intervention request was received in the proceeding, was deleted as it was deemed to be unnecessary (intervention in this type of proceeding is not permitted). KS' FOF 34 was amended to reflect the identity of the public testifier. KS' FOF 47 was amended to delete reference to KS' statement about the Commission agreeing that KS or other future party need not service the original petitioner in any future proceeding involving the docket. A sentence reflecting the vote of the Commission in recognizing KS as the successor Petitioner was added. Finally, KS' FOF 49 was amended to reflect OP's filing of its comments to KS' proposed D&O. No other substantive changes were made in this section.

**DESCRIPTION OF THE SUBJECT PROPERTY (FOFs 48 through 61)**

KS' FOF 59 pertaining to use of a portion of the subject property as a solar farm was deleted as it was misplaced. KS' 67 reflecting that there is no residential community of significant size in close proximity to the subject property was deleted as it was deemed to be unnecessary. No other substantive changes were made in this section.

#### DESCRIPTION OF THE SOLAR FARM (FOFs 62 through 111)

KS' FOF 112 was amended to delete references that were unnecessary and self-serving in regard to SunEdison. In this section, several findings were deleted as well as added from elsewhere in the document (particularly in the next section, *Petitioner's Financial Capability to Undertake the Project* to better fit the heading of the section. KS' FOFs 68 and 69 were amended to incorporate the tax map key designations of Phase 1 and Phase 2. In addition, KS' FOF 101 was amended to delete a reference that the development and operation of the solar farm does not violate any of the existing conditions under the original D&O, as amended, inasmuch as the solar farm is not yet developed or in operation to determine whether there is no violation of the existing conditions. No other substantive changes were made in this section.

#### PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT (FOFs 112 through 113)

Several findings relating to Ms. Doss were deleted as they were deemed to be unnecessary. As noted above, most of the findings in this section were moved to the previous section as it was deemed to be a more appropriate location given the subject matter.

#### STATE AND C&C PLANS AND PROGRAMS (FOFs 114 through 121)

No substantive changes were made in this section.

#### NEED FOR THE PROPOSED DEVELOPMENT (FOFs 122 through 138)

This section was added with applicable findings from the *Social Impacts* and *Economic Impacts* section.

#### ECONOMIC IMPACTS (FOFs 139 through 145)

As noted above, many of the findings that were in this section were placed in the previous section. FOF 136 relating to the costs of the solar farm phases was deleted. A similar finding was already located in the section, *Petitioner's Financial Capability to Undertake the Project* and was

subsequently moved to the section, *Description of the Solar Farm*. No other substantive changes were made in this section.

#### SOCIAL IMPACTS (FOFs 146 through 154)

KS's FOFs 151 through 153, 164 through 166, 169 through 171, and 185 through 189 were deleted as they were deemed to be inappropriate and/or unnecessary in this section. FOFs 162 and 163 were moved to the section, *Need for the Proposed Development*.

#### IMPACTS UPON RESOURCES OF THE AREA (FOFs 155 through 158)

KS' FOF 194 was moved to a new section, *Energy/Electrical Services*. No other substantive changes were made in this section.

#### AGRICULTURAL RESOURCES (FOFs 159 through 167)

No substantive changes were made in this section.

#### FLORA AND FAUNA (FOFs 168 through 170)

No substantive changes were made in this section.

#### ARCHAEOLOGICAL AND HISTORICAL RESOURCES (FOFs 171 through 185)

Several findings were amended to be true findings. KS' FOF 221 was amended to affirmatively state that KS will comply with any mitigation measures in the approved AIS or protection plan. No other substantive changes were made in this section.

#### CULTURAL RESOURCES (FOFs 186 through 194)

KS' FOF 227 was amended to be a true finding. No other substantive changes were made in this section.

#### GROUNDWATER AND SURFACE WATER RESOURCES (FOFs 195 through 204)

KS' FOFs 235 through 238 included Condition Nos. 1 and 2 of the original D&O and a finding that stated the requirements under said conditions

have been met were deleted as they were deemed inappropriate in this section. KS' FOFs 242 and 243 were amended to be true findings. FOF 244 was deleted as it was redundant. No other substantive changes were made in this section.

#### RECREATIONAL AND SCENIC RESOURCES (FOFs 205 through 213)

KS' FOF 251 was amended to be a true finding. No other substantive changes were made in this section.

#### ENVIRONMENTAL QUALITY

##### NOISE (FOFs 214 through 218)

No substantive changes were made in this section.

##### AIR QUALITY (FOFs 219 through 221)

No substantive changes were made in this section.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### HIGHWAY AND ROADWAY FACILITIES (FOFs 222 through 243)

Several findings were amended to be true findings. KS' FOF 288 was amended to affirmatively state that KS will implement the construction management measures recommended in its traffic consultant's study. KS' FOF 290 was amended to affirmatively state that in the event Phase 2 goes forward, a traffic assessment will be prepared for the DOT's review and acceptance prior to the construction of Phase 2, and that any mitigation measures recommended in the accepted assessment will be implemented by SunEdison. No other substantive changes were made in this section.

##### DRAINAGE AND STORMWATER (FOFs 244 through 253)

No substantive changes were made in this section.

##### SOLID WASTE (FOF 254)

This section was added to incorporate a finding regarding the solar farm and recycling.

POLICE AND FIRE PROTECTION (FOFs 255 through 260)

This section was added to incorporate KS' FOFs 262 through 267, which were located immediately preceding the section, *Highway and Roadway Facilities*.

ENERGY/ELECTRICAL SERVICES (FOFs 261 through 271)

This section was added with KS' FOFs 172 through 178 and 182 through 184 from the section, *Social Impacts*, and FOF 194 from the section, *Impacts Upon Resources of the Area*.

COMMITMENT OF STATE FUNDS AND RESOURCES (FOFs 272 through 273)

No substantive changes were made in this section.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN (FOFs 274 through 277)

KS' FOF 304 was deleted as it was deemed redundant. KS's FOF 308 was deleted as it was deemed unnecessary. No other substantive changes were made in this section.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM (FOF 278)

This section was added to comply with HRS chapter 205.

COMMISSION CRITERIA FOR A MOTION TO AMEND

This entire section was deleted as it was deemed unnecessary.

SERVICE OF MOTION, HAR § 15-15-94(A)

This entire section was deleted as it was deemed unnecessary and/or redundant with other findings elsewhere in the document.

GOOD CAUSE SHOWN TO MODIFY THE WAIAWA ORDER, HAR § 15-15-94(B)

This entire section was deleted as it was deemed unnecessary and/or redundant with other findings elsewhere in the document.

3. **CONCLUSIONS OF LAW**

KS' COL1 was amended to reflect the location and tax map key designation of the solar farm site. KS' COL 2 was deleted as it was deemed redundant. No other substantive changes were made in this section.

4. **DECISION AND ORDER**

Language was inserted to reflect the location and tax map key designation of the solar farm site. Also, a reference to Exhibit "A" was incorporated to reflect a map of the subject property. Language to indicate that the existing conditions in the docket remain in full force and effect was added.

Condition Nos. 7 through 10 are conditions recommended by staff (see staff report on the Motion). These conditions address various concerns and incorporate safeguards into the decision. KS' Condition No. 7 (Condition No. 11 in staff's proposed D&O) was amended to include reference to the implementation of mitigation measures, including the use of BMPs, as part of KS' representations as per the staff report on the Motion. Condition Nos. 12 through 16 represent the Commission's standard conditions. KS' Condition No. 8 was deleted in favor of the Commission's standard condition relating to the notice of imposition of conditions.